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THE POWERS

OF THE

SUPREME CHIEF.

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UNDER THE NATIVE ADMINISTRATION ACT, 1927.

ORIGINAL MACHINERY OF THE AFRICAN NATIVE GOVERNMENT AND NATIVE SOCIAL LIFE.

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THE POWERS OF THE SUPREME CHIEF.

Under the Native Administration Act, 1927.

ORIGINAL MACHINERY OF THE AFRICAN NATIVE GOVERNMENT.

This convention of Paramount Chiefs and Chiefs of the Bantu peoples held this 6th day of April, 1928, at Bloemfontein, after a careful examination of the Native Administration Act, 1927, in relation to the status and powers of Chiefs as well as the powers of the Supreme Chief of all natives, hereby agrees to draw up a memorandum for submission to His Excellency the Governor-General in his capacity as Supreme Chief.

The purpose of the Native Administration Act is to effect better control of the native population, and to recognise native law and custom so far as it is compatible with the principles of civilisation. The Act does not codify native law but allows it to be interpreted by the courts. In the opinion of this convention this recognition of native law and custom is a step in the right direction in the history of native administration in the country. The object of the memorandum is to show and prove that according to native law and custom the Supreme Chief has never had the powers given him under the Native Administration Act of 1927.

In this connection it will be necessary, before giving the reasons against the provisions of the Act dealing with the powers of the Supreme Chief to give a brief historical sketch of the policy underlying this Act in order that the points raised in the memorandum should be well understood.

When the Europeans established themselves in Natal in the early days they found there a despotic form of government among the Zulus. This form of government was introduced by Tshaka and was perpetuated under the regime of Dingaan. That it was a form of government contrary to Bantu system is our firm conviction. Tshaka was a military genius who, like his contemporary Napoleon, imposed his will upon the people who came

under his rule. He had to do this in order to carry out his gigantic schemes of conquest. It was his despotic and tyrannical rule that brought about his death at the hands of his brothers, Dingaan and Mpande. And it was Dingaan's despotism which made Mpande rebel against him, and helped the Boers to overthrow his power.

Now it was this system of government which was subsequently, with modifications, adopted by the Natal Government in the administration of native affairs. Sir Theophilus Shepstone, who had virtually made himself ruler of the Zulu nation, was responsible for the initiation of this policy. When he annexed the Transvaal in 1877 the policy was extended, and was subsequently adopted by the Republican Government. As in Natal, where the Governor was made the Supreme Chief of the Zulus, the President of the Transvaal was made the Supreme Chief of the natives of this Province. But the policy of Shepstone differs from that of the present Government in that it recognised native progress. The natives, as soon as they acquired civilised habits of living, were to be exempted from coming under the direct rule of the Supreme Chief. In Natal they were exempted from native law and custom, and in the Transvaal they were exempted from laws imposed upon the uncivilised natives. But under the Administration Act of 1927 native progress is not sufficiently recognised. Both the civilised and the uncivilised natives, the professional and the ordinary native living in his primitive state, are subject to the autocratic rule of the Supreme Chief. Obviously this retrogressive step is influenced by the policy of segregation, a policy which does not regard the Bantu people as an integral part of the national life of this country.

The African National Congress, of which this Council of Chiefs is an integral part, is strongly opposed to the policy of segregation unless by it is meant the creation of two States, one European and the other Native. We cannot see how two peoples, living in the same country and under the same governmental control, can develop separate nationalities and separate civilisations. It is our firm conviction that the Bantu people can only develop along their own lines if they have a country of their own and are free from European interference. However, if it is the policy of the Government that the Bantu people should be governed by means of their own laws and customs, we feel it our duty, as the guardians of our people, to point out that this should be in accordance with native law and not with the wishes of the white race. It is our firm conviction that the policy underlying the Native Administration Act is a violation of Bantu system of government. Now we shall proceed to show the difference in the following manner:

BANTU SOCIETY.

Before we proceed to deal with the Bantu system of government, let us deal first with the organisation of Bantu Society. There are rules and

sanctions which govern Bantu society, which, like any other human society, is composed of families, clans and tribes. Its centre, of course, is the family, from whose organisation our idea of government is derived. Let us suppose that the family of "A" consists of "A" (the head of the family), his sons nd daughters. This family is bound together by customs which must be obeyed by all members. For instance, the children of "A" look upon his brothers as their fathers. That is to say, they owe the same respect and obedience to their uncles as to their father. It will be seen therefore that one's uncles, in native law, occupies the same position in the family as the father. So that if one's father is the Chief, and he dies, his position in the family is filled up by one's uncles. The eldest son certainly succeeds the father as Chief, but he is subject to the control of his uncles, whom he regards as his fathers. He is, therefore, in duty bound, according to this law of kinship, to seek the advice of his uncles in both his private and State affairs. Thus, the first limitation of the Chief's power starts in the family. Where a Chief acted without the knowledge and consent of his uncles and brothers, he was considered to be guilty of a violation of tribal law and custom, and the consequences might be disastrous to the solidarity of the tribe or nation.

BANTU GOVERNMENT.

The tribal government consists of (a) the Chief as the father of the tribe; (b) the Chief's council, of which his uncles, brothers and heads of other clans are members; and (c) the Tribal Pitso.

THE POWERS OF THE CHIEF.

The Chief is hereditary; he is not appointed. As already stated, the Chief's powers are limited. On account of the law of kinship he cannot do anything without the knowledge and consent of his uncles and brothers. Now his council is composed not only of his uncles and brothers, but heads of other clans who must be consulted.

THE CHIEF'S COUNCIL.

The Chief's council is not an elected body; nor is it appointed. It consists of the Chief's uncles, brothers and heads of other clans. Its function is both administrative and judicial. That is to say, the Council makes and administers laws as well as hears and tries cases. It is also a court of appeal, because clans which comprise the tribe have some sort of autonomy. They have their councils to deal with local matters.

TRIBAL PITSO.

The Chief's council, as already stated, has the right to make laws, but these laws cannot be put into operation without the sanction and knowledge of the tribe. For this purpose a tribal pitso forms an essential part of the Bantu system of government. This body is not elective, but every male person of age is expected to attend the Pitso. It is at this gathering that

the laws made by the Chief's council are received for consideration and, if accepted, are then promulgated.

THE PARAMOUNT CHIEF.

When a powerful tribe conquers several tribes, its Chief becomes a Chief over the Chiefs of these tribes. He is the Paramount Chief. But the tribes do not lose their self-government; they retain their chiefs and councils. But they are subject to the control of the Paramount Chief's Council.

THE PARAMOUNT CHIEF'S COUNCIL.

The council of the Paramount Chief consists of his uncles brothers and chiefs of other tribes. It functions on the same lines as that of the Chief's council. It is the national court of appeal.

THE NATIONAL PITSO.

The National Pitso functions as the Tribal Pitso described above.

THE POWERS OF THE PARAMOUNT CHIEF.

The powers of the Paramount Chief, as those of the Chief, are limited, first by the law of kinship, and secondly by the rights of other Chiefs. He has not the right to appoint and depose chiefs. If a Chief commits an offence or a crime, he is brought before the Paramount Chief's council to be tried by his peers, and, if found guilty, he is fined, or the accused Chief escapes penalty by running away and seeking refuge among other tribes outside the domain of the Paramount Chief.

It is not denied that a powerful Chief, a military genius, can succeed in imposing his will upon his subjects by defying the laws and sanctions of kinship and over-riding the rights of the Chiefs under him.

That in a normal form of Bantu government despotism was never tolerated is ably shown by Dr. George McCall Theal, who says, *inter alia*:—

> "But while the government of all tribes was thus in theory despotic, the power of the Chiefs in those which were not under military rule was usually more or less restrained. In each clan there was a body of counsellors—commonly hereditary—whose advice could not always be disregarded. . . . . Among the tribes under the normal system of government, the rule of the Paramount Chief in times of peace was hardly felt beyond his kraal. Each tribe possessed all machinery of administration, and in general it was only in cases of serious quarrels between them or of appeals from judicial decisions that the national head used his authority. In war, however, he issued commands to all, and on important occasions he summoned the minor chiefs to aid him with advice."

It will be seen, therefore, that a normal form of government among natives is more democratic than autocratic. This point is further illustrated by what Mosesh said in his appeal for British protection in 1862.

> "I will be under the Queen as her subject, and my people will be her subjects but under me. . . . . I wish to govern my own people by native law, by my own laws; but if the Queen wishes after this to introduce other laws into my country I would be willing; but I should wish such laws to be submitted to the Council of the Basuto, and when they are accepted by my council, I will send to the Queen and inform her that they have become laws."

Here we find in 1862 an African Paramount Chief stating that the laws which Her Majesty Queen Victoria, as the Paramount Chieftainess of the Basuto nation, might like to enact, should be submitted, not to him as the head of the Basuto nation, but to the council of the Basuto people.

THE SUPREME CHIEF.

The Native Administration Act creates the Governor-General as the Supreme Chief of all natives in Natal, Transvaal and the Orange Free State. It gives him autocratic and arbitrary powers in his dealings with the native population of these Provinces. He has the power to appoint and depose Chiefs, to divide and sub-divide tribes, and to imprison, banish and exile those who might criticise his autocratic actions. These powers we are told are derived from native law and customs. We respectfully beg to submit that according to native law and custom the Supreme Chief has no such powers.

The Governor-General, as the Supreme Chief of natives, is recognised by us, because he is the representative of His Majesty the King, who is the real Supreme Chief of all the natives of the Union. But we humbly and respectfully submit that the Supreme Chief, according to our laws, cannot make and administer laws without the assistance of the Chiefs under him. We respectfully, therefore, urge and request His Excellency the Supreme Chief to consider the advisability of establishing a council of Chiefs, whose functions shall be to assist the Supreme Chief in his administration of native affairs, members of such council to be nominated by this House of Chiefs.

DEPOSED CHIEFS.

This convention of Chiefs is aware that several Chiefs in the country have been deposed and banished from their tribes. The convention does not wish to discuss the merits or demerits of the cases, but wishes to draw the attention of the Supreme Chief to the fact that these Chiefs have been punished sufficiently and that they deserve His Excellency's clemency. Forgive and forget is our earnest prayer to the Supreme Chief. Magnanimity is the foundation of a wise policy.

Native Social Life.

The Chief. In accordance with native law and custom proper, the Chief must be the son of the national wife.

Chief's wives. The Chief may marry as many wives as he pleases.

The national wife. The national wife is not married in the same way as other wives, but her " bohadi " is paid by the tribe, and not by the Chief himself; and this wife must be selected by the people.

Her status. The national wife is generally married last, but as a national wife, she is superior over all the other wives of the Chief.

Where she comes from. The national wife generally comes from the Royal Family of a particular tribe.

How she is married. The national wife's " bohadi " is contributed to by Chiefs and petty chiefs *under* the Paramount Chief.

NOTE.—The word " Chief " in these paragraphs shall be understood to mean Paramount Chief, unless otherwise explained.

General procedure. A bull is generally sent to the particular tribe from which the national or royal wife will come, even before both the future Chief and national wife are born.

Her marriage. On the occasion of her (the royal wife) marriage and arrival at the royal place (the prince's palace), no fires are permissible in any of the villages under the Chief.

Where fire is obtainable. Fire, caused by friction of two particular sticks, is made at the royal palace, and from here only may the fire be taken. This is a token of the fact that she is the " light " of the whole tribe, and one from whom the chieftainship will descend. The fire must be taken by the right-hand house first, and down the line (of wives).

Succession of Chiefs. In case of the Chief's death before there is any male issue with the royal wife, his (Chief's) brother of the right-hand house will have access to the royal wife to raise his brother's seed, and in the case of the royal wife's death before such issue, her sister replaces her, but " bohadi " is not as in the first case, nor is the ceremony as before.

NOTE.—In the case, however, of the royal wife not giving birth to a male issue, her sister is also taken by the Chief to wife, to give male issue.

Should the national wife misconduct herself with a commoner, she is divorced, sent to her home with her issue, and the commoner is sentenced to death. When this has been done, the parents of the divorced woman must get a substitute for her, otherwise the usual procedure is followed (see above). Misconduct of royal wife.

It is not permissible, in native law, for the Chief's brother to have access to the throne in the Chief's life-time, except only after a war between them necessitating the Chief to escape with his followers. Dispute between Chief and his brother.

As the Chief in native custom usually has many wives, it naturally meant the Chief had many children, and this raises the question, "who married the Chief's daughters?" In native custom, there is one daughter who must marry the crown prince of the tribe which shall have contributed towards her "bohadi," even before she was born. Other daughters may marry the sons of Chiefs, petty chiefs and nobles. It must be mentioned here that a wealthy commoner was permitted to marry a Chief's daughter. Marriage of the royal children. Bohadi of other daughters belonging to the brothers of these daughters.

NOTE.—In native custom the woman remains a minor all her life-time, and there is no such thing as "age majority."

The "bohadi" of the Chief's daughters remain the property of the respective houses. Bohadi of the Chief's daughters.

The Chief's cattle are those got through fines, and it is by means of these cattle that he pays the "bohadi" for the other wives, and from these generally slaughters for his men—the council. Chief's cattle.

In accordance with native custom proper, the Chief (Paramount) never presides at Court, even if he happens to be present; he is supposed not to be there. All cases are tried by the Court. Machinery of Government. Court.

The Court is constituted as follows: The Chief's council, petty chiefs, and all men of the tribe. His (Chief's) right-hand brother presides and gives judgment in the cases, which judgment is referred to the Chief (Paramount) for his prerogative. This is particularly in the matter of civil cases, *e.g.*, seduction of girls. Its constitution.

In native custom all girls generally had their born husbands; therefore, a boy or young man who seducted a girl had seducted a "born" wife of a certain young man. The young man, in the case of dispute, is brought before the Court, and the Court decides; but if there is no dispute the parents of both parties come to a certain agreement by which the parents of the boy will pay. But the whole matter must be reported to the Chief-in-Council. Misconduct of young people. Seduction of girls.

NOTE.—This is only custom.

The fine in seduction cases does not exceed six head of cattle, but in the case of dispute, and after judgment has been given against the boy or young man, the cattle of the young man's people may be seized (by the Chief's order), and one of the seized cattle, usually the biggest ox, is slaughtered for the members of the Court, and this substitutes the costs of the Court, Fine in seduction cases.

How a young girl is punished by her mates.

When a young girl is seduced, her mates (girls) spit on her as an indication of their indignation. They break down the walls of her yard, usually used as fence, and she is cast out of the young people's society. She is not permtited to cut her hair, and either this young man must marry her or an old man who has a wife or wives—but not a young man.

The issue from illegitimate connection.

The illegitimate issue of the girl belongs to the Chief. If the issue is a female, the Chief gives, on her marriage, one or two head of cattle from her " bohadi " to the girl's parents. In the case of a male issue, the same thing is done with the cattle he has worked for.

General custom regarding elopement.

In the event of a young man eloping with a young woman, the cattle of the boy's parents are seized, and the usual procedure (see above) is followed, but this time more than six head of cattle are given (as " bohadi ").

The case of a Chief.

In the event of a chief taking some one's wife or daughter, the husband or the daughter's father sends one head of cattle to the Chief with a view to appeasing him (Chief). Afterwards the Chief sends a large herd of cattle to either the husband of the wife taken or the father of the daughter.

Position of the Chief.

Paramount Chief is made by the military power of his people or tribe over the other tribes in the country over which he then becomes Chief. In native custom the government is vested, as has already been stated, in the council, and *not* in the Chief as an individual. The council is composed of Paramount Chief's brothers, and uncles and the Chiefs. Therefore, the Government is not autocratic, but rather aristocratic.

Power of the Council.

This council has power even to judge the Paramount Chief himself. When the Paramount Chief has done wrong he appears before the council, composed of his brothers and uncles, and when no agreement is reached then the matter is referred to the general council (Paramount Chief's brothers, uncles and Chiefs). In the event of a Paramount Chief refusing to the judgment of this council, then the men refuse to attend the " Khotla." This generally leads to friction and the division of the tribe. In this council the judgment is pronounced by his great-uncle (his father's brother).

Criminal cases.

In a criminal case, such as murder, the Paramount Chief presides, and this is the only occasion when he can preside; but he takes no part in the discussion. When judgment has been given, such as death sentence, he (the Chief) gives the spear to some one to carry out the execution. The deceased may not be buried until his parents have paid one head of cattle, and his people may not weep for the deceased.

Culpable homicide.

In the case of culpable homicide, it must be proved by the Court. Such accused, that is to say, his people, must give a substitute, male or female, who is expected to bear progeny for the deceased person, and the people who receive this substitute pay some head of cattle with a view to maintaining friendly relationship between themselves, the parties concerned.